

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: CS/SB 1690

INTRODUCER: Health Care Committee and Senator Saunders

SUBJECT: Physician Assistants

DATE: March 23, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HE	Fav/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill requires a probable cause panel of the Board of Medicine or the Board of Osteopathic Medicine convened to consider disciplinary action against a physician assistant alleged to have violated applicable grounds for discipline to include one physician assistant. The physician assistant appointed by the Council of Physician Assistants to the probable cause panel must be a Florida-licensed physician assistant and may hear only cases involving disciplinary actions against a physician assistant. If the appointed physician assistant is not present at the disciplinary hearing, the panel may consider the matter and vote on the case in the absence of the physician assistant. Certain training requirements relating to disciplinary action for Board of Medicine members do not apply to the appointed physician assistant. The bill provides that rules do not need to be adopted to implement the requirements of the bill.

This bill amends sections 458.331 and 459.015, Florida Statutes.

II. Present Situation:

Physician Assistants

Physician assistants licensed under ch. 458 and ch. 459, F.S.,¹ are authorized to provide health care services under the supervision of a medical physician or osteopathic physician. A supervising physician may delegate to a physician assistant that he or she supervises the authority to perform medical acts of diagnosis, treatment, and prescription. Each task and procedure performed by a physician assistant must, by rule, be documented in the appropriate

¹ See ss. 458.347 and 459.022, F.S.

medical record and later reviewed, signed, and dated by the supervising physician.² Each physician or group of physicians supervising a licensed physician assistant must be qualified in the medical areas in which the physician assistant is to perform and must be individually or collectively responsible and liable for the performance and the acts and omissions of the physician assistant. A physician may not supervise more than four currently licensed physician assistants at any one time.

For purposes of the regulation of physician assistants, “supervision” is defined in ss. 458.347 and 459.022, F.S., to mean responsible supervision and control. Except for cases of emergency, supervision requires the easy availability or physical presence of the licensed physician for consultation and direction of the actions of the physician assistant. “Easy availability” is defined to include the ability to communicate by way of telecommunication. The Board of Medicine and the Board of Osteopathic Medicine must establish rules as to what constitutes responsible supervision of the physician assistant. The Board of Medicine and the Board of Osteopathic Medicine have adopted identical administrative rules that define “direct supervision” to mean the presence of the supervising physician on the premises so that the supervising physician is immediately available to the physician assistant when needed.³ “Indirect supervision” is defined under the rules to mean the easy availability of the supervising physician to the physician assistant who includes the ability to communicate by telecommunications and the supervising physician must be within reasonable physical proximity.⁴

Chapter 458, F.S., governs the practice of medicine in Florida. Section 458.331, F.S., specifies grounds for which a medical physician, anesthesiologist assistant, or physician assistant may be subject to disciplinary action by the Board of Medicine. The Board of Medicine, in conjunction with the Department of Health, must establish a disciplinary training program for board members. The program must provide for initial and periodic training in the grounds for disciplinary action, the actions which may be taken by the board and the department, changes in relevant statutes and rules, and any relevant judicial and administrative decisions. A member of the Board of Medicine may not participate on probable cause panels or in disciplinary decisions of the board unless he or she has completed the disciplinary training program.

Similarly, ch. 459, F.S., governs the practice of osteopathic medicine in Florida. Section 459.015, F.S., specifies grounds for which an osteopathic physician, anesthesiologist assistant, or physician assistant may be subject to disciplinary action by the Board of Osteopathic Medicine.

Disciplinary Procedures

Chapter 456, F.S., specifies general regulatory provisions for health care practitioners licensed by the Division of Medical Quality Assurance within the Department of Health. The chapter specifies procedures for the discipline of health care practitioners. Section 456.073, F.S., sets forth procedures the Department of Health must follow in order to conduct disciplinary proceedings against practitioners under its jurisdiction. The department, for the boards under its jurisdiction, must investigate all written complaints filed with it that are legally sufficient.

² See Rules 64B8-30.012 and 64B15-6.0105, Florida Administrative Code.

³ See Rules 64B8-30.001(3) and 64B15-6.001(4), Florida Administrative Code.

⁴ See Rules 64B8-30.001(5) and 64B15-6.001(5), F.A.C.

Complaints are legally sufficient if they contain facts, which, if true, show that a licensee has violated any applicable regulations governing the licensee's profession or occupation. Even if the original complainant withdraws or otherwise indicates a desire that the complaint not be investigated or prosecuted to its completion, the department at its discretion may continue its investigation of the complaint. The department may investigate anonymous, written complaints or complaints filed by confidential informants if the complaints are legally sufficient and the department has reason to believe after a preliminary inquiry that the alleged violations are true. If the department has reasonable cause to believe that a licensee has violated any applicable regulations governing the licensee's profession, it may initiate an investigation on its own.

When investigations of licensees within the department's jurisdiction are determined to be complete and legally sufficient, the department is required to prepare, and submit to a probable cause panel of the appropriate board, if there is a board, an investigative report along with a recommendation of the department regarding the existence of probable cause. A board has discretion over whether to delegate the responsibility of determining probable cause to the department or to retain the responsibility to do so by appointing a probable cause panel for the board. The determination as to whether probable cause exists must be made by majority vote of a probable cause panel of the appropriate board, or by the department if there is no board or if the board has delegated the probable cause determination to the department.

When the department presents its recommendations regarding the existence of probable cause to the probable cause panel of the appropriate board, the panel may find that probable cause exists or does not exist, or it may find that additional investigative information is necessary in order to make its findings regarding probable cause. Probable cause proceedings are exempt from the noticing requirements of ch. 120, F.S. After the panel convenes and receives the department's final investigative report, the panel may make additional requests for investigative information.

Instead of making a finding of probable cause, the probable cause panel may issue a letter of guidance to the subject of a disciplinary complaint. Letters of guidance do not constitute discipline. If the panel finds that probable cause exists, it must direct the department to file a formal administrative complaint against the licensee under the provisions of ch. 120, F.S. The department has the option of not prosecuting the complaint if it finds that probable cause has been improvidently found by the probable cause panel. In the event the department does not prosecute the complaint because probable cause was improvidently found, it must refer the complaint back to the board that then may independently prosecute the complaint. The department must report to the appropriate board any investigation or disciplinary proceeding not before the Division of Administrative Hearings under ch. 120, F.S., or otherwise not completed within 1 year of the filing of the complaint. The appropriate probable cause panel then has the option to retain independent legal counsel, employ investigators, and continue the investigation, as it deems necessary.

The boards within the Department of Health have the status of an agency for certain administrative actions, including licensee discipline. A board may issue an order imposing discipline on any licensee under its jurisdiction as authorized by the profession's practice act and the provisions of ch. 456, F.S. Typically, boards are authorized to impose the following disciplinary penalties against licensees: refusal to certify, or to certify with restrictions, an application for a license; suspension or permanent revocation of a license; restriction of practice

or license; imposition of an administrative fine for each count or separate offense; issuance of a reprimand or letter of concern; placement of the licensee on probation for a specified period of time and subject to specified conditions; or corrective action.

III. Effect of Proposed Changes:

The bill requires a probable cause panel of the Board of Medicine or the Board of Osteopathic Medicine convened to consider disciplinary action against a physician assistant alleged to have violated applicable grounds for discipline to include one physician assistant. The physician assistant appointed by the Council of Physician Assistants to the probable cause panel must be a Florida-licensed physician assistant and may hear only cases involving disciplinary actions against a physician assistant. If the appointed physician assistant is not present at the disciplinary hearing, the panel may consider the matter and vote on the case in the absence of the physician assistant. The training requirements relating to disciplinary action for Board of Medicine members specified in s. 458.307(4), F.S., do not apply to the appointed physician assistant. The bill provides that rules do not need to be adopted to implement the requirements of the bill.

The effective date of the bill is July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
